



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Theodore W. Meyers)
)
APPLICATION NO.: 09/652,927)
)
FILED: August 31, 2000)
)
FOR: TEE BAFFLE FOR USE AT)
INLET OR OUTLET OF SEPTIC)
AND OTHER ON-SITE WASTE)
DISPOSAL SYSTEMS)

FOURTH AFFIDAVIT OF THEODORE W. MEYERS UNDER 37 CFR §1.132

I, Theodore W. Meyers, hereby swear as follows:

1. I am founder and President of Tuf-Tite, Inc. ("Tuf-Tite"), the Assignee of United States Patent Application No. 09/652,927, entitled "TEE BAFFLE FOR USE AT THE INLET OR OUTLET OF SEPTIC AND OTHER ON-SITE WASTE DISPOSAL SYSTEMS," and I am also the sole inventor thereof.

2. The purpose of this Fourth Affidavit is to present yet additional consistent evidence of secondary considerations of non-obviousness which, by itself or in combination with the evidence of non-obviousness submitted with my November 26, 2002, August 6, 2003, and March 21, 2005 Affidavits, is more than sufficient to rebut the obviousness rejections under 35 U.S.C. § 103 of claims 1-6 and 15-23 in the Office Action mailed June 8, 2005.

Additional Evidence of Secondary Considerations of Non-Obviousness

- Commercial Success

3. Since March 1, 2005, sales of TB-4 T-Baffle tees by Tuf-Tite have continued to accelerate.

4. Attached as Exhibit 1 to this Fourth Affidavit is a sales report entitled "Sales History for TB-4, T-BAFFLE FOR SEPTIC TANK INLET AND OUTLET," which is a true and accurate twelve month record of the sales volume for the TB-4 T-Baffle tees sold by Tuf-Tite covering the time period from December 1, 2004 through November 30, 2005.

5. As indicated in the sales report attached at Paragraph 6 of my March 21, 2005 Affidavit, during the time period from March 1, 2001 through February 28, 2002, Tuf-Tite sold a total of 43,198 TB-4 T-Baffle tees; during the time period from March 1, 2002 through February 28, 2003, Tuf-Tite sold a total of 55,144 TB-4 T-Baffle tees; during the time period from March 1, 2003 through February 27, 2004, Tuf-Tite sold a total of 67,638 TB-4 T-Baffle tees; and during the time period from March 1, 2004 through February 28, 2005, Tuf-Tite sold a total of 99,531 TB-4 Tee Baffle tees, for a total during the forty-eight month period from March 1, 2001 through February 28, 2005 of 265,511 TB-4 T-Baffle tees, a very small percentage of which, less than 1%, were free samples.

6. As indicated in the sales report attached as Exhibit A to this Fourth Affidavit, during the period from March 1, 2005 through November 30, 2005, Tuf-Tite sold a total a of 87,376 TB-4 T-Baffle tees, bringing the total number of TB-4 T-Baffle tees sold by Tuf-Tite since March 1, 2001 to 352,887 TB-4 T-Baffle tees, a very small percentage of which, less than 1%, were free samples..

7. In July, 2005, Tuf-Tite introduced a new version of the tee baffle, designated the "TB-4-18," which has an 18-inch rise (as compared to a 14-inch rise on the TB-4 T-Baffle tees).

8. Attached as Exhibit 2 to this Fourth Affidavit is a sales report entitled "Sales History for TB-4-18, T-BAFFLE FOR SEPTIC TANK INLET AND OUTLET-18," which is a true and

accurate twelve month record of the sales volume for the TB-4-18 T-Baffle tees sold by Tuf-Tite covering the time period from July 1, 2005 through November 30, 2005. As indicated in that sales report, in the first five months of sales, Tuf-Tite sold 3,296 TB-4-18 T-Baffle tees, a very small percentage of which, less than 1%, were free samples.

9. As independent products, the TB-4-18 T-Baffle tees represented by the sales report attached as Exhibit 2 to this Fourth Affidavit are all covered by at least claims 2, 6, 15, 21 and 22 of the present patent application.¹

10. When used in conjunction with effluent filters, such as the Tuf-Tite EF-4-18 effluent filter in addition to at least claims 2, 6, 15, 21 and 22, the TB-4-18 T-Baffle tees represented by the sales report attached as Exhibit 2 to this Fourth Affidavit are additionally covered by claims 16 and 20.

11. When used in combination with a length of pipe received in the inlet/outlet hub, such as a pipe that may carry effluent away from a septic tank and out toward a leach field, in addition to at least claims 2, 6, 15, 21 and 22, the TB-4-18 T-Baffle tees represented in the sales report attached as Exhibit 2 to this Fourth Affidavit are covered by claim 17.

12. When used in combination with a reducer bushing between the inlet/outlet hub and a length of pipe received in the inlet/outlet hub, in addition to at least claims 2, 6, 15, 21 and 22, the TB-4-18 T-Baffle tees represented by the sales reports attached as Exhibit 2 to this Fourth Affidavit are covered by claim 18.

¹ In paragraphs 8-11 of my Third Affidavit of March 21, 2005, the phrase “at least claims 2, 6, 15, 16, 20, 21, and 22” should have read “2, 6, 15, 20, 21, and 22”, and those paragraphs are hereby corrected accordingly.

13. When Tuf-Tite's sales of the new TB-4-18 T-Baffle tees are combined with the number of TB-4 T-Baffle tees sold by Tuf-Tite between March 1, 2001 and November 30, 2005, Tuf-Tite has sold a total of 356,183 tees that embody at least claims 2, 6, 15-18, and 20-22 of my patent application, a very small percentage of which, less than 1%, were free samples.

14. The strong sales of the TB-4 T-Baffle tees and TB-4-18 T-Baffle tees are due to the claimed features of the tee, including: a wall thickness between 0.075" and 0.100" over a substantial portion of an elongated generally cylindrical main body portion; an inlet/outlet hub of an inlet/outlet port, such inlet/outlet hub having a diameter sized to receive a pipe of a first outer diameter (e.g., Schedule 40 pipe) and being adaptable to receive a pipe of a second outer diameter (e.g., SDR-35 pipe), and the diameter of the inlet/outlet hub being greater than the diameter of the elongated main body portion.

15. I know of no other reason, except for the claimed features noted above and the cost savings realized by those claimed features which are passed along to customers, to account for such dramatic sales. For example, the TB-4 T-Baffle tees and TB-4-18 T-Baffle tees have not been advertised or marketed in a manner, or at any level, differently from any of the numerous other on-site waste system and related component products sold by Tuf-Tite. Based upon my experience in the industry, including as to marketing and advertising by Tuf-Tite and by others, it is my view that the level of marketing and advertising spent on the TB-4 T-Baffle tees and TB-4-18 T-Baffle tees since their introduction would not generate the growth and level of sales experienced in 2001-2005.

Conclusion

16. The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under the laws of the United States of America, and that such willful false statements and the like may jeopardize the validity of the application or of any patent(s) resulting therefrom, declares that all statements made of his knowledge are true; that all statements made on information and belief are believed to be true, and that each of the attached documents is a true and accurate copy of what it purports to represent.

December 8, 2005

/ Theodore w. Meyers/
Theodore W. Meyers
Inventor & President,
Tuf-Tite, Inc.

Sales History for TB-4, T-Baffle for Septic Tank Inlet and Outlet

Item

Usage

Evd

Back

1st Yr

2nd Yr

3rd Yr

Pds Past End Date

12 12/30/04
11 01/31/05
10 02/28/05
9 03/31/05
8 04/30/05
7 05/31/05
6 06/30/05
5 07/31/05
4 08/31/05
3 09/30/05
2 10/31/05
1 11/30/05

Totals (12-1)

Avg. of Pds (12-1)

REDACTED

REDACTED

Qty Sls

8,265
5,992
5,593
7,295
11,636
12,293
8,811
8,104
10,937
9,580
8,392
10,328

107,226

8,935.50

Sales History for IB-4-18, T-Baffle for Septic Tank Inlet & Outlet 18"

Pds Past	End Date
12	12/30/04
11	01/31/05
10	02/28/05
9	03/31/05
8	04/30/05
7	05/31/05
6	06/30/05
5	07/31/05
4	08/31/05
3	09/30/05
2	10/31/05
1	11/30/05
Totals (12-1)	
Avg. of Pds (12-1)	

REDACTED

Qty	Sls
0	0
0	0
0	0
0	0
0	0
0	0
0	0
542	542
482	482
279	279
709	709
1,284	1,284
3,296	
274.67	

REDACTED